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Harless & Calhoun, of Christiansburg, for plaintiff in error.

John R. Saunders, Atty. Gen., J. D. Hank, Jr., Asst. Atty. Gen., and Leon M. Bazile, Second Asst. Atty. Gen., for the Commonwealth.

MULLINS *v.* SUTHERLAND et al.

Nov. 17, 1921.

[109 S. E. 420.]

1. Sales (§ 383*)—Evidence Held Insufficient to Sustain Finding of Application by Buyer of Staves on Improper Contract.—In an action in conversion by sellers against buyer, by reason of an alleged application by the buyer of staves on a contract not existing at the time of the contract of sale in violation of such contract, evidence held insufficient to sustain a finding that the staves were not applied on a then existing contract.

2. Evidence (§ 568 (1)*)—Opinion Evidence Not Proper.—In action by sellers for conversion by the buyer in shipping goods on later contracts of the buyer, contrary to the contract between plaintiffs and defendant, testimony of one of the sellers that they loaded the goods for the purpose of shipping "under this contract" and that "they were not shipped under the contract," but stating no reason for that conclusion, was insufficient to show conversion, as it was incumbent upon the sellers to show the facts and not the mere opinion of the witness.

[Ed. Note.—For other cases, see 13 Va.-W. Va. Enc. Dig. 248-250.]

3. Sales (§ 477 (1)*)—Seller May Waive Provision of Contract.—A seller could waive a provision in a conditional contract of sale under seal providing that the staves could be applied by defendant buyer only on existing contracts, and permit sales by buyer to other persons.

[Ed. Note.—For other cases, see 13 Va.-W. Va. Enc. Dig. 248-250.]

4. Sales (§ 477 (1)*)—Provision for Resale Only to Certain Parties Held Waived.—A provision in a contract of sale of staves that resale by buyer could be made only to parties under existing contracts, seller retaining title for purpose of additional security for the purchase price until paid for, was waived, where the purchaser applied shipments of staves on contracts not existing at the time of the contract of sale, and no objection was made that there was a violation of the contract.

[Ed. Note.—For other cases, see 13 Va.-W. Va. Enc. Dig. 248-250.]

5. Sales (§ 477 (2)*)—Application of Purchase of Staves on Improper Contracts Held Not Conversion.—Where provision in a contract for the sale of staves that they could only be applied by purchaser on then existing contracts was waived and the actual possession and right to the staves passed to buyer, and after such waiver he ap-

*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.

plied a shipment of staves on a contract not existing at the time of the original contract, sellers could not maintain trover against the purchaser under a provision in the contract retaining title in the seller.

6. Trover and Conversion (§ 16*)—Right to Possession Essential.—One who had neither actual possession of property nor the right to demand the immediate possession thereof at the time it was disposed of by defendant in violation of contract cannot maintain an action of trover.

[Ed. Note.—For other cases, see 13 Va.-W. Va. Enc. Dig. 248-250.]

Error to Circuit Court, Dickenson County.

Action by S. R. Sutherland and others against E. L. Mullins. Judgment for plaintiffs, and defendant brings error. Reversed.

Chase & McCoy, of Clintwood, for plaintiff in error.

Geo. C. Sutherland, of Clintwood, for defendant in error.

HOOVER et al. v. HOOVER.

Nov. 17, 1921.

[109 S. E. 424.]

1. Bastards (§ 13*)—Legitimacy Established if Father at Any Time Unequivocally Recognized Child as His.—The law so favors legitimacy that if, at any time, the putative father unequivocally recognized the child as his, such child is legitimate and the father's heir at law, no matter how often he repudiated his paternity.

[Ed. Note.—For other cases, see 2 Va.-W. Va. Enc. Dig. 335.]

2. Bastards (§ 12*)—Voluntary Marriage of Parents Inferred from Lack of Haste and Absence of Threats.—Where the father of a child born out of wedlock, did not marry the mother until six weeks after his arrest on a charge of seduction, and no threat, except that of the prosecution itself, was made, nor physical force used, there was an inference that his act was deliberate, and that he intended to legitimate the child; the purpose of the seduction statute being to require the seducer to right his wrong in the interest of his child as well as for the sake of the woman.

[Ed. Note.—For other cases, see 2 Va.-W. Va. Enc. Dig. 335.]

3. Bastards (§ 6*)—Evidence Held to Show Father's Recognition of Child as His.—In a partition suit involving complainant's legitimacy, evidence held to show that her father, by his conduct, his silence when he should have spoken, and his words, had recognized her as his child.

[Ed. Note.—For other cases, see 2 Va.-W. Va. Enc. Dig. 335.]

4. Bastards (§ 3*)—Presumptions in Favor of Legitimacy and in Support of Judgment in Doubtful Cases.—Every fair presumption

*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.